

Tenure reform in Namibia's communal areas

Wolfgang Werner*

Abstract

Twenty-five years after Namibia gained its independence, the country continues to be characterized by a dualistic land tenure structure, this despite subsequent governments' ambitious programmes of land reform. Communal land tenure, however, has two sides to it: while it offers an important resource to the rural poor, it is also an important asset to rural elites, and this article provides a brief overview of how communal tenure reforms have gradually increased the advantages of communal tenure for ruling elites. It suggests that the nature of communal tenure in its various administrative incarnations – native reserves, homelands, communal areas – has changed from primarily providing access to land for poor households and labour migrants to becoming sites of capital accumulation. The conclusion is that without proper legal protection, households in communal areas will become increasingly vulnerable to losing access to land.

Introduction

Twenty-five years after Namibia gained its independence, the country continues to be characterized by a dualistic land tenure structure: approximately 43% of the land area is held under freehold title and is commonly referred to as the commercial sector, while 15% consists of proclaimed state land such as game parks. The remaining 42% consists of non-freehold or communal land.

In 1990 the newly independent government initiated an ambitious land reform programme. It aimed at improving access to agricultural land for previously disadvantaged communities as well as securing the tenure of households and individuals who hold land under different customary land tenure regimes. In 1991, the Office of the Prime Minister hosted the National Conference on Land Reform and the Land Question (hereafter, the National Land Conference) to discuss how Namibia's land reform programme in the freehold and non-freehold sectors should be conceptualized and implemented.¹ The general consensus at the Conference was "that the communal areas should be retained, developed and expanded where necessary", as communal lands sustained a majority of the Namibian population, "especially poor farmers". In order to protect the rights of access to communal land for farming households, it was resolved that new applicants for

* Wolfgang Werner is Associate Professor of Land Management at the Namibian University of Science and Technology (NUST, the former Polytechnic). E-mail: wwerner@polytechnic.edu.na

¹ Republic of Namibia, (ed.), *National Conference on Land Reform and the Land Question*, Vol. 1, Windhoek, Office of the Prime Minister, 1991.

access to communal land “should take account of the rights and customs of the local communities living there” and that “farmers with the potential to become commercial farmers can be encouraged, if necessary through government schemes, to acquire land in the commercial sector”. Finally, “farmland now used by large farmers in the communal areas should not be expanded and in future should be reduced to make space for small farmers”.² As a result of its consultative nature, the consensus resolutions of the National Land Conference had no binding character on government policy. But they sent a strong signal that access to communal land should not only be retained, but increased by reducing the privatization of communal areas and encouraging large farmers to move into the freehold sector.

A socio-economic survey conducted in preparation for the Land Conference confirmed these sentiments. A majority of people interviewed expressed the view that grazing in communal areas should remain communal. Available evidence suggests that these feelings continue to be widespread, despite the fact that access to communal land is no longer sufficient to sustain rural households. Typically, a large number of rural households depend on multiple income streams including pensions, grants and itinerant work. The importance of non-farming incomes for rural livelihoods led Mendelsohn to ask whether such households “should be viewed as farming households or not”.³ While this remains a moot point, access to communal land for the majority of poor households remains important for their livelihoods.

Cousins and Claassens have argued that communal tenure has two faces: “one revealing advantages for ruling (or aspirant) elites, including traditional authorities, and one revealing key strengths for the rural poor”.⁴ This article provides a brief overview of how communal tenure reforms have gradually increased the advantages of communal tenure for ruling elites. It suggests that the nature of communal tenure in its various administrative incarnations – native reserves, homelands, communal areas – changed from primarily providing access to land for poor households and labour migrants to becoming sites of capital accumulation. After a brief discussion of the historical development of communal areas, post-independence tenure reform will be reviewed.

The nature of communal areas

The Traditional Authorities Act, Act No. 17 of 1995, defines communal land as that land which is “habitually inhabited by a specific traditional community”.⁵ The latter in turn is defined as an “indigenous, *homogenous*, endogamous social grouping of persons that

² Ibid.: 35, 39.

³ John Mendelsohn, *Farming Systems in Namibia*, Windhoek, Research and Information Services of Namibia, 2006: 39.

⁴ Ben Cousins and Aninka Claassens, “Communal Land Rights, Democracy and Traditional Leaders in Post-Apartheid South Africa”, in: Munyaradzi Saruchera, (ed.), *Securing Land and Resource Rights in Africa: Pan-African Perspectives*, Bellville, Programme for Land and Agrarian Studies, 2004: 139-158 (139).

⁵ Office of the Prime Minister, *Traditional Authorities Act, Pub. L. No. 17 of 1995*, 1995: 3.

shares a common language, culture and customs and recognizes a traditional authority".⁶ The legal definition alludes to a common characteristic of communal tenure systems across the African continent, which includes "a degree of community control over who is allowed into the group, and thus being able to obtain residential and farming rights, which are usually strong and secure".⁷ The legal definition also alludes to homogenous groups of people, suggesting a high degree of social equity in communal systems.

The reality in communal areas at independence and since then has been much more complex than simple legal definitions suggest. To start with, communal areas were characterized by growing inequalities. It was estimated in the early 1990s that approximately 50% of farming households in the north-central regions, for example, did not own any livestock. Farming was no longer restricted to subsistence farming, but was becoming commercial in orientation, at least for a small but growing group of farmers. Increasing inequalities in asset ownership characterized communal areas across the country. The individualization of communal grazing areas for private farming supports this assertion.⁸

The growing enclosures of communal grazing areas were also a manifestation of the weakening of customary governance systems in some communal areas. The legitimacy of traditional authorities to administer customary land rights in some areas was called into question. A socio-economic survey conducted across the country in preparation for the National Land Conference found widespread dissatisfaction with the system of land allocation in the war ravaged north-central regions. The treatment of women's rights and private enclosures was singled out.⁹ By contrast traditional authorities in Caprivi – now Zambezi – Region, were "highly respected" and their continued role in land governance was widely supported.¹⁰ In the southern communal areas, issues of privatization of communal land rather than a lack of legitimacy of traditional leaders were more prominent. This, in turn, pitched the interests of a "rich, politically powerful minority [...] at odds with those of the poor majority".¹¹ Tenure reform in Namibia thus had to address a complex situation, characterized by significant regional differences.

The only commonality across the country was that under the Namibian Constitution, the state is the legal owner of all communal land. This, as Adams et al. have argued, "can be an opportunity or a difficulty, depending on how tenure reform is perceived to affect

⁶ Ibid., my emphasis.

⁷ Cousins and Claassens, "Communal Land Rights": 139.

⁸ Jonathan Cox, Carol Kerven, Wolfgang Werner and Roy Behnke, *The Privatisation of Rangeland Resources in Namibia: Enclosure in Eastern Oshikoto*, London, Overseas Development Institute, 1998.

⁹ Republic of Namibia, *National Conference*: 205.

¹⁰ Ibid.: 249.

¹¹ Ibid.: 268f.

the interests of those with power and influence".¹² The state had the power to give effect to the consensus resolutions of the National Land Conference, which called for the development of communal land in the interests of poorer sections of society, or assert the interests of the new elite by promoting the commercialization of communal areas through a transformation of customary tenure systems to individual rights.

The establishment of 'native reserves' after 1915

The land question in Namibia was shaped by large-scale expropriation of land and livestock from indigenous communities. This process was uneven, insofar as it affected primarily communities that practiced extensive livestock farming in the southern, more arid parts of the country. Communities that combined livestock farming with cultivation were largely spared. The subsequent establishment of a Police Zone separated those parts that were settled by white settlers as a result of land dispossession, and the mixed farming areas in north-central and north-eastern Namibia.¹³

After 1915, so-called native reserves were created in the Police Zone to provide a wage subsidy particularly to the developing commercial farming sector, which was the preserve of white settlers.¹⁴ These areas were never intended to "creat(e) reserves to which tribes could remove themselves and thus restore their old tribal methods of living under the Chiefs." Instead,

married women and children should live on the reserves and have the benefit of the milk from their cattle [...] men should go out like the natives of the Transvaal and leave their women at home on the reserves until they return.¹⁵

Between 1923 and 1926, a total of sixteen such native reserves were established. The system of 'native administration' – and hence the administration of land – in native reserves in the Police Zone differed from the system pursued in areas outside the Police Zone. The existence of strong and relatively well-defined traditional leaders outside the Police Zone made it possible for the colonial administration to implement a system of indirect rule. By contrast, the large-scale process of land dispossession of livestock farming communities in the Police Zone also destroyed their traditional leadership. This was used as a pretext by the colonial administration to fashion an administrative system that minimized the powers of traditional leaders and gave colonial officials extensive powers to administer native reserves.¹⁶ An "authoritarian local administrative structure"

¹² Martin Adams, Siphon Sibanda and Stephen Turner, "Land Tenure Reform and Livelihoods in Southern Africa", in: Camilla Toulmin and Julian Quan, (eds.), *Evolving Land Rights, Policy and Tenure in Africa*, London, International Institute for Environment and Development, 2000: 1-15 (3).

¹³ Wolfgang Werner, "A Brief History of Land Dispossession in Namibia", *Journal of Southern African Studies*, 19 (1), 1993: 135-146.

¹⁴ *Ibid.*

¹⁵ National Archives Namibia (NAN), South West African Administration (SWAA) A 158/1, Secretary for the protectorate to Secretary for Lands, Cape Town, 20 May 1920.

¹⁶ *Uazengisa & Another v The Executive Committee of the Administration for Herero's and 11 Others, Judgement*, The Supreme Court of South West Africa, 22 September 1989, 57-58 Annexure 'D'.

was established in native reserves, “which combined a strict line of command running from central offices in Windhoek via the district magistrate to the reserve Superintendent”.¹⁷

In terms of colonial legislation, traditional leaders in the Police Zone were stripped of all their powers relating to the allocation and cancellation of land rights. These now became the exclusive preserve of colonial officials and in particular reserve superintendents. The extent to which these new governance structures effectively replaced customary regimes on the ground has not been established and is likely to have differed across native reserves. However, the legitimacy of this system was contested as late as the 1980s, when the need to clarify the validity of customary laws and the powers of traditional leaders resulted in several court cases.¹⁸

Colonial policy was focused on limiting class formation in the reserves to ensure the continued supply of labour to the colonial economy. Opportunities to accumulate limited amounts of capital by a few were thwarted, as this might have led to “instilling a certain greed for money” that would gradually undermine “the co-operation that is so essential for the good management of reserves”.¹⁹ Capital investments in water supply and other essential infrastructure were kept to a minimum and were tightly controlled by the colonial administration, enabling the latter to control economic development in native reserves and ensuring that sufficient labour was available for settler farming.²⁰ The South African Department of Information in summarising the Odendaal Commission’s report noted in the 1960s that “the rate of development in the non-White areas was comparatively slow, judged by standards in the Republic of South Africa”.²¹

The Odendaal Commission and its aftermath

Political developments in the late 1950s and early 1960s heralded a new approach to so-called native administration in what was then South West Africa. The precursor to this was “a change of method within black politics in South West Africa” which culminated in a defiance campaign against forced removals from the Old Location in Windhoek.²² Within a few years, the defiance of the late 1950s evolved into armed struggle against apartheid South Africa. In 1962, SWAPO announced that it would pursue both military

¹⁷ Kössler, Reinhart, *In Search of Survival and Dignity: Two Traditional Communities in Southern Namibia under South African Rule*, Windhoek, Gamsberg Macmillan, 2005: 49.

¹⁸ *Ndisiro v Gemeenskapsowerheid van die Mbanderu Gemeenskap van die Rietfonteinblok in Hereroland en 9 ander: Uitspraak*, Hooggeregshof van Suidwes-Afrika, 7 June 1984; *Uazengisa & Another v The Executive Committee of the Administration for Herero’s and 11 Others, Judgement*, 1989.

¹⁹ Wolfgang Werner, *‘No One Will Become Rich’: Economy and Society in the Herero Reserves in Namibia, 1915–1946*, Basel, Schlettwein, 1998: 193.

²⁰ Kössler, *Search of Survival*: 52f.

²¹ Department of Information, *Extensive Summary: Report of the Commission of Enquiry into South West Africa Affairs*, Typescript, Pretoria, n.d.: 12

²² André du Pisani, *SWA/Namibia. The Politics of Continuity and Change*, Johannesburg, Ball, 1986: 155.

and political actions in pursuit of its political objectives, and started the armed struggle in 1966.²³ These developments confronted the South African government with the first mass resistance to its political domination of South West Africa. It responded to this challenge in two ways. Firstly, it sought to crush any nationalist organization through increased physical repression. Secondly, and more importantly to the discussion here, it set out to foster the establishment of a black middle class through a series of reforms to the previous approach to native administration.

The South African government announced in 1962 that it intended to encourage the accelerated economic and social development of South West Africa's black population to change the socio-economic and political situation in the country.²⁴ Later that year it appointed the Commission of Enquiry into South West Africa Affairs under the chairmanship of F.H. Odendaal, which, among other things, had to make recommendations

on a comprehensive five year development plan for the accelerated development of the various non-White groups of South West Africa, inside as well as outside their own territories and for the further development and building up of such Native territories in South West Africa.²⁵

The Odendaal Commission developed a discourse on communal land development that differed from the previous policies in so far as it no longer regarded native reserves simply as labour reservoirs, but as potential sites of capital accumulation. It acknowledged that "social stratification according to income and level of occupation" had taken place as "the traditional system of supplying their own needs" had gradually been "supplanted by a *money system* peculiar to the system of the Whites".²⁶ It proposed to capitalize on this by providing blacks with "the opportunity, necessary assistance and encouragement to find an outlet for their new experience and capabilities".²⁷

Although the Odendaal Commission was "much more an intervention into *politics* than agricultural production *per se*" its proposals on agriculture were developed in the *Five Year Plan for the Development of the Native Areas*.²⁸ This *Plan* recommended specific interventions for improving agricultural production in the communal areas. The underlying assumption guiding its deliberations was that "agricultural planning must [...] pave the way in converting an existing subsistence economy to an exchange economy".²⁹

²³ Ibid.: 152, 183.

²⁴ Ibid.: 159.

²⁵ Republic of South Africa, *Report of the Commission of Enquiry into South West Africa Affairs 1962/1963* (No. RP 12/1964), Pretoria, Government Printers, 1964: 3.

²⁶ Ibid.: 425, emphasis in original.

²⁷ Ibid.: 429.

²⁸ Donna Pankhurst, "Similar but Different: Assessing the Reserve Economy Legacy of Namibia", *Journal of Southern African Studies*, 22 (3), 1996: 405-420 (418) emphasis in original; South West Africa, *A Five Year Plan for the Development of the Native Areas*, Windhoek, 1966.

²⁹ South West Africa, *Five Year Plan*: 94.

On the basis of detailed assessments of soil types and carrying capacities in existing 'native reserves', the Five Year Plan recommended far reaching measures to transform customary land tenure systems into more individualized land tenure. It recommended "a large scale fencing programme" for the predominantly Otjiherero speaking reserves, arguing that "proper pasture rotation" was "a prerequisite for optimal utilization of available resources" that could only be achieved through enclosure.³⁰

Such recommendations for large-scale fencing programmes were not made for all communal areas. But the privatization of communal range lands by way of fencing as a necessary condition for improved animal husbandry and range management became firmly embedded in agricultural planning in communal areas generally. Native Affairs officials soon promoted the individualization of customary rangeland tenure through the introduction of fencing in other communal areas. In 1970, a sub-committee of the 'Planning and Co-ordinating Committee' in Owamboland submitted that "the present system of land ownership and utilization had a limiting influence on the administration (extension) and production (lack of continuity) as economic asset [sic]".³¹

The implementation of the recommendations of the Five Year Plan started in earnest in the Okamatapati area of former Hereroland East in 1970/71.³² Due to the shortage of underground water, a pipeline was constructed from Berg Aukas to Okamatapati with the objective of opening up new pastures for individual livestock farmers. Branch lines from the main pipeline supplied water to 56 farming units, covering approximately 275,000 ha. Surveys were carried out for the erection of fences.³³ In the Owambo Mangetti, 96 farms were similarly surveyed and allocated to individual farmers.

These official developments set in motion a spate of private enclosures in communal areas. In response to the official surveying of communal land in the Owambo Mangetti, the Ndonga Traditional Authority (TA) authorized the fencing of communal land by people under its jurisdiction. These authorizations were recorded by the TA and were found to exist in the mid-1990s. Using these authorized enclosures as precedent, many wealthy livestock owners proceeded to fence off communal land at their own expense with the objective of improving livestock husbandry and promoting commercialization.³⁴

³⁰ Ibid.: 163.

³¹ NAN OVA, 49, 6/8/4/1 Vergadering van die Onderkomitee oor Dorpsbeplanning en ontwikkeling en Landbouontwikkeling van die Beplannings- en Koördinerende Komitee op Woensdag, 2 September 1970: 2.

³² Uanzengisa, *Annex D*: 54.

³³ Fiona Adams and Wolfgang Werner, *The Land Issue in Namibia: An Inquiry*, Windhoek, Namibia Institute for Social and Economic Research, 1990: 161.

³⁴ Carol Kerven, "The Knife Cuts on Both Blades': Redefining Property Rights in Eastern Oshikoto Region, Namibia", in: Jonathan Cox, Carol Kerven, Wolfgang Werner and Roy Behnke, (eds.), *The Privatisation of Rangeland Resources in Namibia*, London and Windhoek, Overseas Development Institute (ODI), 1998: 65-90.

Accelerated tenure reforms: the 1980s

The 1980s were characterized by a process of 'restructuring the colonial state and society', which was set in motion by the Turnhalle Constitutional Conference in 1975.³⁵ South Africa gave up its legislative powers and set up an internal central administration under a Council of Ministers consisting of members of the Democratic Turnhalle Alliance (DTA).³⁶ The programme of fostering a black middle class, which was initiated in the wake of the Odendaal Commission, was expanded without changing the basic homeland structure in order "to expand and incorporate the black petty-bourgeoisie." Much of these reforms centred on the abolition of apartheid legislation which hampered the development of such a class.³⁷ The overarching objectives of this reform programme were spelt out by Mr D. Mudge of the DTA when he stated in the National Assembly in 1980 that

We don't want to encourage this policy of communal property ownership. We want to try, we want to encourage our people to become individual property owners. We want to create a land class, a property owners' class and I would like to say here today that we don't want to create a land class by putting one person in a position to buy another person's farm. He can buy it, but at the same time we want to say that the existing communal property should be acquired by private individuals.³⁸

The long-term development objective of SWA/Namibia and of agriculture in particular was to develop a "financially healthy middle class of agriculturalists".³⁹

Calls for the abolition of 'communal' land tenure in favour of private ownership were tempered by concerns that large-scale commercialization would lead to "unmanageable urbanization problems". Moreover, communal areas would cease to form an "important buffer" which could absorb the unemployed during times of recession, thus relieving the state of the burden of supporting them.⁴⁰ These concerns notwithstanding, politicians serving on several ethnic Legislative Assemblies of Representative Authorities became the most vocal protagonists of introducing economic units in their respective communal areas.⁴¹ They regarded this as a means to obtain the equivalent of a large scale commercial farm in the communal areas – free of charge. This middle class was able to articulate its interests in their respective ethnically-based Representative Authorities, modified versions of *bantustans*. Ethnic politicians used their *bantustan* political platforms to exhort the virtues of privatizing communal land in the interests of improved

³⁵ Lionel Cliffe, *The Transition to Independence in Namibia*, Boulder, Rienner, 1994: 33.

³⁶ *Ibid.*: 34f.

³⁷ Wolfgang Werner, "Ethnicity and Reformism", in: Gerhard Töttemeyer, Vezera Kandetu and Wolfgang Werner, (eds.), *Namibia in Perspective*, Windhoek, Council of Churches in Namibia, 1987: 69-81 (73).

³⁸ Cited in *ibid.*: 77.

³⁹ Adams and Werner, *Land Issue*: 105.

⁴⁰ Department of Governmental Affairs, *Draft National Development Strategy for South West Africa*, Windhoek, Directorate Development Co-ordination, 1985: chapter 7.

⁴¹ Adams and Werner, *Land Issue*: 105-107.

agricultural output and healthier pastures. Realizing that the existing communal areas were not able to satisfy their demands for large farms, they argued that whites should be forced to make some of their land available.⁴²

Contestation after independence

During the first ten years of independence, little attention was paid to land administration in the communal areas. The new elite of well-connected, wealthy people exploited the policy and the legal vacuum during the first decade of independence to fence off commonages for their own private use. Customary governance systems were further eroded in the absence of clear guidelines on the powers and mandates of traditional leaders, leading to what some would call open access regimes. That the role of traditional leaders in a democratic Namibia was a contested issue is confirmed by the appointment of the Commission of Inquiry into matters relating to Chiefs, Headmen and other Traditional or Tribal Leaders while preparations for the National Land Conference were underway. It was tasked with investigating the appointment and recognition of traditional leaders as well as their powers, duties and functions and to make recommendations on “the viability or otherwise of traditional or tribal authorities”, but left the land issue to be dealt with by government.⁴³

The delay in passing the Communal Land Reform Act of 2002 was partly caused by contestation about the future powers of traditional leaders in communal land administration. The first Outline of a National Land Policy⁴⁴ and the first Communal Land Bill⁴⁵ represented attempts by the state to assert itself in communal land administration by displacing traditional authorities. Underlying the proposed tenure reform was Article 100 of the Constitution, which vests ownership of communal land in the state. As the owner of such land, the state proposed to create regional land boards to take over land administration functions in communal areas.⁴⁶ The Outline of a National Land Policy proposed to transfer “all authority over and rights to communal land which are currently exercised or held by traditional leaders and other customary authorities on behalf of communal area residents to the Regional Land Boards”.⁴⁷ Traditional authorities duly

⁴² Ibid.: 107.

⁴³ Republic of Namibia, *Report by the Commission of Inquiry into Matters Relating to Chiefs, Headmen and Other Traditional or Tribal Leaders*, Windhoek, 1991: 1.

⁴⁴ Republic of Namibia, “Outline of a National Land Policy”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.

⁴⁵ Republic of Namibia, “Communal Land Bill”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.

⁴⁶ Nickey Iyambo, “The Role of Traditional Authorities in a Changing Namibia”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997: 18.

⁴⁷ Republic of Namibia, “Outline”: 163-166.

recognized under the Traditional Authorities Act could be designated to perform such land administration functions as Regional Land Boards might have specified.

These proposals were modelled in part on the practices in Botswana, where communal land is vested in Land Boards. They amounted to stripping traditional leaders of all powers with regard to the administration of customary tenure. Part of the reason for attempting to restrict the powers of traditional leaders in communal land administration must be sought in the particular form of state governance that was established at independence. At national level, political leaders were elected to the National Assembly based on party lists. The number of members of parliament from each party was determined by the percentage of votes the party obtained during national elections. Crucially, these elected representatives at national level did not have a constituency to which they were answerable. Regional Councillors, on the other hand, were elected in 13 regions by constituencies to which they were answerable. Within this newly established political structure, only traditional authorities enjoyed widespread legitimacy and considerable influence in areas under their jurisdiction. It is conceivable that traditional authorities with their well-established areas of jurisdictions in the rural areas might have been perceived as threats to attempts by the new state to establish itself in rural areas. At least one politician was reported to have expressed fears that strong traditional leaders “might [...] marginalize the function of constitutionally-established institutions and offices such as the regional governor and councillors”.⁴⁸

During a consultative conference on communal land administration in 1996, the state's proposals to relegate traditional leaders to a subordinate position were rejected out of hand by the traditional leaders in attendance. The general sentiment of traditional leaders from across the country was put very succinctly in a submission by seven traditional authorities from Owambo (sic) which stated that “the traditional leaders should not be made to be the back-yard boys of what should be technical and advisory bodies, namely the Regional Land Boards”.⁴⁹

The outcome of the conference was that the draft land policy and Communal Land Bill had to be revised to allow the continued participation of traditional authorities in the administration of customary land tenure. Section 4(1) of the Communal Land Bill, which proposed to transfer the regulation and control over the occupation and use of communal land to Regional Land Boards, was deleted and the Regional Land Boards were to be composed of persons recommended by traditional authorities.⁵⁰

The Conference, which was attended and addressed by senior cabinet ministers, also placed the future of communal land on the agenda. The policy options that faced government at the time were summarized by a senior member of the SWAPO party, who

⁴⁸ *New Era*, 3 November 1993, cited in Wolfgang Werner, *Land and Land Tenure Policy. Briefing paper for GTZ Project Appraisal Mission*, Windhoek, NEPRU, 2000: 2.

⁴⁹ Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997: 69.

⁵⁰ *Ibid.*: 196.

argued that at independence government had three basic options to deal with the existence of first and second class systems of tenure, i.e. freehold and customary tenure. These were:

- Nationalising freehold land for redistribution;
- Completing the process of alienating and privatising all communal land; and
- Continuing with the status quo.⁵¹

Each of these options had far-reaching implications. Nationalization might have resulted in the destabilization of the agricultural sector with a resultant loss of employment opportunities. Turning communal areas into private property would have placed most communal land “into the hands of a small elite of white and black landlords”, creating large-scale landlessness and destitution. For these reasons, government opted for the third option, “at least temporarily and then to introduce a process of gradual reform of that system”.⁵² The role of the state was to lay “the foundation and framework upon which private economic activities can flourish”.⁵³

The reforms envisaged referred to the gradual transformation of customary tenure systems into private ownership. Arguments presented in favour of this transformation read like a rehash of the recommendations of the Odendaal Commission which reported 30 years earlier. Freehold and customary tenure were now characterized as “first and second class systems of land tenure”,⁵⁴ a categorization that was incorporated into the National Land Policy.⁵⁵ What defined second class tenure was that people holding customary land rights were not able to use their land as collateral for credit. Consequently, they were unable to develop economically. Moreover, because the second class tenure system did not provide for ownership of land, land degradation due to overgrazing and overcropping ensued. And finally, little investment was taking place particularly in newly created towns in communal areas because of the absence of private ownership.⁵⁶

Contestation over the future of communal land areas did not only take place in conference halls. While government was procrastinating over where to go with tenure reform in the communal areas, a veritable land reform was taking place on the ground.

⁵¹ Hidipo Hamutenya, “Development and Communal Land System”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997: 32.

⁵² Ibid.

⁵³ Helmut Angula, “The Viability of the Agricultural Economy in Communal Areas”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997: 51.

⁵⁴ Hamutenya, “Development”: 32.

⁵⁵ Ministry of Lands, Resettlement and Rehabilitation, *National Land Policy*, Windhoek, Ministry of Lands, Resettlement and Rehabilitation, 1998: 1.

⁵⁶ Pendukeni Iivula-Ithana, “Welcoming Address”, in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997: 12.

Encouraged by the official privatization of communal land for private farming and emboldened by the constitutional provisions that the citizens of Namibia had a right to settle wherever they wished, the uncontrolled enclosure of communal grazing areas continued unabated. To this day, the extent of private enclosures on communal land is not known, but is believed to be considerable.⁵⁷

Components of tenure reform in communal areas

Tenure reform in the communal area of Namibia is guided by the Communal Land Reform Act of 2002, as amended, and its Regulations. In brief, the Act acknowledges the continued role of traditional leaders in administering customary land rights in communal areas, but regulates their powers. It provides for the establishment of Communal Land Boards (CLB) whose main task it is to verify both existing and new customary land allocations before they become legally effective through registration.⁵⁸

The Act recognizes two forms of tenure: customary land rights and leasehold. The definition of customary land rights, however, does not do justice to the complexity of natural resource rights in communal area. It narrowly defines them as rights to a farming unit, a residential unit and any other form of customary land rights that is recognized by the Minister (Article 21). Existing customary land rights consist of those rights which were authorized by a traditional leader prior to the enactment of the law.⁵⁹ Rights to commonages “are expressed solely in terms of grazing rights”. Shared resources such as water, fuel wood, plants, foods and thatching, to name only a few, are not included.⁶⁰ The narrow definition of rights to communal land potentially compromises the objective of removing uncertainty about legitimate access and rights to communal resources.⁶¹

The registration of customary land rights began in 2003. The initial estimate of customary land rights to be registered was based on census data, but has been revised to an estimated total of 245,000 in 2014.⁶² The registration of customary land rights follows a process of demarcating the boundaries of the land and validating the claim to a specific parcel of land through a participatory process at village level. All mapped parcels are then digitally mapped and combined with the details of applicants. Once this process is complete, all applications are displayed in public for seven days, before being submitted to the CLB for approval or rejection. Once a right has been approved by the

⁵⁷ Cox et al., *Privatization*.

⁵⁸ Legal Assistance Centre, *Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)*, 2nd ed., Windhoek, LAC, 2009: ii.

⁵⁹ Liz Alden Wily and Uda Nakamhela, *Group Rights in Communal Lands*, Windhoek, Millennium Challenge Account Namibia, 2013: 18.

⁶⁰ *Ibid.*

⁶¹ Giacomo P. Chiari, *Report of the UNDP Mission on Rural Livelihoods and Poverty in Namibia*, Windhoek, United Nations Development Programme, 2004: 8.

⁶² Maarit Thiem, *A Decade of Communal Land Reform. Review and Lessons Learnt, with a Focus on Communal Land Rights Registration*, Windhoek, GIZ, 2014: 32.

Communal Land Board, it becomes a registered land right. Progress in registering customary land has been slow. The deadline for registration has been extended a few times, and by March 2014 only 30% of the estimated 245,000 customary land rights had been registered as deeds.⁶³

The CLRA stipulates that Land Boards may only approve and register customary land rights that do not exceed 20 hectares, ostensibly to curb 'land grabbing'. Larger areas need approval by the Minister. These provisions have caused much confusion and resentment, particularly in communal areas that primarily practice extensive livestock farming. In the continued absence of any legal protection of customary land rights to commonages, many people interpreted the 20 hectare restriction as limiting their grazing areas to 20 hectares.

The issue of providing legally protected rights to commonages for groups of users is gradually being addressed by the Ministry of Land Reform. New application forms issued in 2014 now make it possible for groups and legal entities to apply for customary and leasehold rights.⁶⁴ In addition, detailed guidelines on how to secure customary land rights to commonages have been developed with the support of the Millennium Challenge Account Namibia in its Communal Land Support Sub-activity⁶⁵ and the Programme for Communal Land Development.⁶⁶ The process of registering legal entities to apply for long-term leaseholds over commonages is at an advanced stage in at least four implementation areas of the Programme of Communal Land Development.

The CLRA has introduced leaseholds over communal land with the aim of supporting the gradual commercialization of communal land in a controlled way. These provisions give effect to a Cabinet decision in 1997 to identify 'un- or underutilized land' in communal areas for commercial agricultural development, a decision which is contrary to a resolution taken at the National Land Conference not to extend the areas being fenced by private individuals for commercial farming. In 2000, the Ministry of Lands and Resettlement and Rehabilitation commissioned consultants to identify un- and underutilized land in 7 regions. A total area of 5,24 million hectares were identified as being available for development.⁶⁷

⁶³ Ibid.: 40.

⁶⁴ Millennium Challenge Corporation / Orgut COWI, *Proposed Working Policy for Group Land Rights*, Windhoek, Millennium Challenge Account Namibia, 2014: 2.

⁶⁵ Millennium Challenge Corporation / Orgut COWI, *Legal Requirements for Group Land Rights*, Windhoek, Millennium Challenge Account Namibia, 2014; idem, *Proposed Guidelines for Group Land Rights in Communal Areas*, Windhoek, Millennium Challenge Account Namibia, 2014; idem, *Proposed Working Policy for Group Land Rights*, Windhoek, Millennium Challenge Account Namibia, 2014.

⁶⁶ Marcel Meijs, Claus-Peter Hager and Jericho Mulofwa, "Local Level Participatory Planning, an Approach Towards Tenure Security and Development Planning", paper presented at the *Annual World Bank Conference on Land and Poverty: Integrating land Governance into the Post-2015 Agenda: Harnessing Synergies for Implementation and Monitoring Impact*, Washington DC, World Bank, 2014.

⁶⁷ International Development Consultants, *Executive summary. The Communal Land Development Studies*, Windhoek, n.d.: 3.

In terms of the CLRA, commercial agricultural development can only be initiated in specially designated areas. These refer to areas that have been identified in consultation with traditional leaders for the development of small-scale commercial farms. Designation of communal land essentially registers formal ownership of designated areas in the name of the state, which makes it possible for the state to enter into long-term lease agreements with private lessees. The Ministry of Lands and Resettlement (now the Ministry of Land Reform) began the process of designating and surveying communal land in 2003 to pave the way for the implementation of the Small-Scale Commercial Farm development project. A total of 621 parcels of land in Zambezi, Kavango East and West, and Ohangwena Regions were surveyed and gazetted.

The implementation of the programme began in earnest in 2012. With the financial assistance of its international partners, the government is developing farm infrastructure to enable beneficiaries to farm commercially. The land is to be held under 99 year lease agreements.

The initial exclusive focus on developing small-scale commercial farms had to be revised, however, in view of the fact that much of the land that was found to be un- and underutilized in 2000, has, in the meantime, been settled. As a result, the project now includes groups of farmers as beneficiaries of infrastructure development. This new approach to the commercialization of communal agriculture is now being implemented under the name of Project for Communal Land Development by the MLR. For the first time, the MLR is supporting a process in which clearly identified groups of communal residents will be able to register legal entities in whose names long-term leases over clearly demarcated land areas can be registered.

Conservancies and community forests

The commercialization of natural resources began in 1996, when the Nature Conservation Ordinance of 1975 was amended to enable communities in communal areas to obtain the same rights over wildlife and tourism as commercial farmers enjoyed. In order to do so, communities could apply to the Minister to establish conservancies (see Nuulimba and Taylor, this volume). The conditions under which such applications are approved include the establishment of governance structures that *inter alia* include a conservancy constitution, the election of a representative conservancy committee and “defined and recorded [...] boundaries of the geographic area of the conservancy”.⁶⁸

In the absence of any legislation that protected the rights of groups of people to common pool resources, conservancy legislation was the only means available to groups of communal residents to obtain some rights, albeit limited, over their common resources, and were regarded as a potential model to provide groups of people with legally protected rights. However, the rights granted to members of a conservancy were conditional rights. In the first instance, communities needed to form a legally recognized

⁶⁸ Andrew S. Long, (ed.), *Livelihoods and CBNRM in Namibia: the Findings of the WILD Project*, Windhoek, Ministry of Environment and Tourism, 2004: 33.

body – a conservancy – to have certain rights protected. Secondly, the Minister has considerable powers “to withdraw the rights a conservancy gains on registration”. Thirdly, a permit was required from the Ministry of Environment and Tourism on the utilization of ‘hunnable’ game, which amounted to a quota.⁶⁹

Crucially, conservancies have no powers with regard to the administration of land rights. They have no powers to make or allocate land rights in communal areas, and lack the legal powers to enforce any land use and management plans.⁷⁰ Moreover, the definition of community in the Nature Conservation Amendment Act of 1996 does not include all members of a geographically designated conservancy area. Instead, a community is defined “as *registered members*”.⁷¹

The Forest Act of 2001 provides for the establishment of community forests. In many respects the community model resembles the conservancy model. Similar to conservancies, the objectives of community forests include the creation of employment opportunities and the improved management of forest resources by allowing communities to benefit from the controlled harvesting of forest products for subsistence and or commercial purposes.⁷² The consent of traditional authorities is required to set up a community forest and the geographical boundaries of the forest must be identified. In terms of Article 15 of the Forest Act of 2001, a management authority must be established to manage the community forest in accordance with a management plan. These management plans are prescriptive in that they determine resource utilization.

Unlike conservancy management committees, whose powers are limited to the controlled use of natural resources for consumptive and non-consumptive use, most commonly game, forest management authorities have extensive powers over the utilization of natural resources in a community forest. These powers include the conferral of rights “to manage and use forest produce and other natural resources of the forest, to graze animals and to authorize others to exercise those rights and to collect and retain fees and impose conditions for the use of forest produce or natural resources”.⁷³ Community forest management authorities thus have extensive legal powers to protect group rights to land and natural resources through the principle of inclusion and exclusion. In some instances, community forest constitutions provide for forest management committees to be elected by traditional authorities, such as in Zambezi Region, for example.⁷⁴

⁶⁹ Ibid.: 34.

⁷⁰ Ibid.: 35.

⁷¹ Ibid.: 37, emphasis in original.

⁷² Joseph Grimm and Michael Humavindu, “Analysis of Community Forests”, in: Christian Schuh, (ed.), *Economics of Land Use. Financial and Economic Analysis of Land-Based Development Schemes in Namibia*, Windhoek, Gesellschaft für Technische Zusammenarbeit, 2006: 82-89 (84).

⁷³ Sect. 15(2)(d) of the Forest Act, No. 12 of 2001.

⁷⁴ Mwendekwa Muhongo, “Forest Conservation and the Role of Traditional Leaders: a Case Study of the Bukalo Community Forest”, in: Manfred O. Hinz and Oliver C. Ruppel, (eds.), *Biodiversity and the Ancestors. Challenges to Customary and Environmental Law. Case Studies from Namibia*, Windhoek, Namibia Scientific Society, 2008: 197-208.

Water management

The process of establishing a new institutional framework for the management of water in communal areas was started in the late 1990s, but only obtained legal sanction in the Water Resources Management Act of 2004.⁷⁵ The objectives of the National Water Policy and the Act are to provide for the full transfer of ownership of water points to communities of users. New governance structures in the form of *Water Point User Associations* were established. These consist of community members who permanently use a particular water point for their supply needs, and any rural household, which regularly uses a particular water point, qualifies for membership. The development of a constitution is a legal requirement before a Water Point User Association can be registered. Typically, these constitutions provide WPAs with powers to permit non-members to use water as well as to exclude any person from the water point who is not complying with the rules, regulations and constitution of a Water User Association.⁷⁶ Each association establishes water point committees to manage specific water points on a day-to-day basis.

The powers of Water Point User Associations go beyond simply controlling access to water points. They also have the power “to plan and control the use of communal land in the immediate vicinity of a water point in co-operation with the Communal Land Board and the traditional authority concerned”.⁷⁷ It is not clear how the immediate vicinity of a water point is defined.

The legal powers to control access to water imply effective control over access to grazing, simply because livestock cannot utilize grazing without access to water. Such powers are only mitigated by the fact that the Water Act does not confer any rights to water point committees to exercise control over open water in pans during and after rainy seasons. These open water points are important for livestock owners for as long as they last, usually until about August-September in the north-central regions.

In at least one case, a community in eastern Namibia has used the legal instruments provided in the Water Act to fence off its village grazing.⁷⁸ The community extended the mandate of its local water point committee to include the general management of grazing and other community matters without any involvement of the state.

Green Scheme

The political objectives of the Green Schemes are to create a class of agricultural entrepreneurs from previously disadvantaged communities who will be able to produce

⁷⁵ Wolfgang Werner, *Integrated Land and Water Management: Policy and Institutional Issues (No. 1)*, Frankfurt/Main, Institute for Social-Ecological Research, 2007: 16.

⁷⁶ Ibid.

⁷⁷ Section 19 as cited in Werner, *Land and Water Management*: 17.

⁷⁸ Chasha Twyman, Deborah Sporton, David Thomas and Andrew Dougill, “Community Fencing in Open Rangelands: a Case Study of Community Self-Empowerment in Eastern Namibia”, in: Tor Benjaminsen, Ben Cousins and Lisa Thompson, (eds.), *Contested Resources. Challenges to the Governance of Natural Resources in Southern Africa*, Cape Town, PLAAS / University of the Western Cape, 2002: 127-140.

commercially for regional markets and beyond. Central to the aims of the GS is the efficient utilization of all production factors such as land, water and human resources in most cases in locations along Namibia's perennial rivers.

In 2004, the Cabinet of the Government of the Republic of Namibia approved the programme of investment and promotion to increase food production through irrigation.⁷⁹ The Department of Water Affairs in the Ministry of Agriculture, Water and Forestry identified water abstraction potentials from the Kunene, Kavango and Zambezi rivers to irrigate an estimated 33,000 ha of communal land straddling those perennial rivers.⁸⁰ The development of irrigation schemes is intended to promote the commercialization of small-holder irrigation, thereby contributing to food security, food self-sufficiency and employment creation.

Long-term lease agreements would be registered for the land required for the Green Scheme, subject to the provisions of the Communal Land Reform Act. The latter require, amongst other things, that the land earmarked for the Green Scheme had to be designated, which requires the consent of traditional authorities in whose areas of jurisdiction the land falls. Section 31 of the Communal Land Reform Act of 2002 stipulates that rights of leasehold may not be granted on land

which another person holds under a customary land right, unless such a person agrees to relinquish his or her right subject to the payment of compensation as agreed to by such a person and suitable arrangements for his or her resettlement on alternative land.⁸¹

One shortcoming of the CLRA is that it does not oblige traditional authorities to obtain the consent of customary land rights holders before agreeing that land is designated as it "avoids interfering in the relationships between land claimants and traditional authorities, whereas it regulates those between the latter and Land Boards".⁸² This situation has given rise to several disputes, particularly in the former Kavango Region, with villagers claiming that they had never been consulted before land parcels they held rights over were designated for Green Scheme development and had not been offered compensation.⁸³

Conclusion

The nature of tenure reform in Namibia's communal areas has been shaped by the changing political economy of colonial South West Africa and, indeed, independent

⁷⁹ Ministry of Agriculture, Water and Forestry, *Green Scheme Policy*, Windhoek, Ministry of Agriculture, Water and Rural Development, 2008: 3.

⁸⁰ Christian Schuh and Wolfgang Werner, "Analysis of the Green Scheme", in: Christian Schuh, (ed.), *Economics of Land Use. Financial and Economic Analysis of Land-Based Development Schemes in Namibia*, Windhoek, Gesellschaft für Technische Zusammenarbeit, 2006, 45-61: 49.

⁸¹ Section 31 of the Communal Land Reform Act, 2002, in: Legal Assistance Centre, *Guide*: 90f.

⁸² Chiari, *Report*: 9.

⁸³ Catherine Sasman, "Raging Dispute over Kavango Land", *The Namibian*, 25 January 2013.

Namibia. After South Africa established its reign over South West Africa, the primary function of native reserves was to provide cheap labour to a developing settler colony. The purpose was not to enable communities in native reserves to develop into successful farmers who would have been able to survive without engaging in wage labour. In the 1960s, the escalation of resistance to South African rule into armed struggle prompted the South African government to initiate a reform programme for former native reserves. The Odendaal Commission was appointed in 1962 to make recommendations on how this could be achieved. The Commission recommended that existing native reserves be consolidated into ethnic homelands, and that there should be increased investment in the infrastructure of homelands to promote economic development.

Central to these recommendations was the replacement of customary tenure arrangements with the gradual privatization of communal grazing areas. It was argued that the aim of these recommendations was to consolidate and expand an incipient black middle class in a bid to weaken political support for the liberation movement. Consequently, tracts of communal land in what are now Oshikoto, Kavango West and Otjozondjupa regions were surveyed, provided with water, and allocated to individual farmers. This amounted to the replacement of customary tenure and land administration with individual tenure, a process that was contested in the 1980s. Communal areas thus became sites of capital accumulation for a small middle class.

Political changes, starting in the late 1970s with the Turnhalle Conference, reinforced the recommendations of the Odendaal Commission. Politicians openly propagated the abolition of communal areas in favour of private property. The single most important stumbling block to achieving this was the realization that such a programme would leave too many households without access to land.

Tenure reform in the communal areas of Namibia after independence was guided by the same discourse on the 'modernization' of communal areas. Despite consensus resolutions taken at the National Land Conference in 1991 to develop communal land for poorer sections of society, the Namibian government not only turned a blind eye to the unauthorized enclosures of commonages, but has embarked on a large-scale programme to alienate large tracts of communal land for commercial agricultural with the attendant individualization of tenure.

While private customary land rights have been made more secure through a process of verifying, mapping and registering them, customary resource rights to the large commons still remain without legal protection. Without proper legal protection of customary land rights to commonages, households in communal areas will become increasingly vulnerable to losing access to land without appropriate compensation to state sponsored agricultural development programmes and private enclosures.

The dominance of the interests of the new post-independence elite in shaping land policy in Namibia is also evident in the urban sector, where insufficient development interventions in favour of poor urban households have resulted in a housing backlog estimated to be in excess of 100,000 units. This led to the formation of the Affirmative Repositioning movement in late 2014 (see Hancox, this volume), the first social

movement since independence to mobilize landless people across class and party lines to exert pressure on government to provide landless urban households with appropriate tenure security and housing. Whether this movement can garner the support of customary land rights holders in communal areas is unclear, but it seems unlikely.

Bibliography

- Adams, Fiona and Wolfgang Werner, *The Land Issue in Namibia: An Inquiry*, Windhoek, Namibia Institute for Social and Economic Research, 1990.
- Adams, Martin, Siphon Sibanda and Stephen Turner, "Land Tenure Reform and Livelihoods in Southern Africa", in: Camilla Toulmin and Julian Quan, (eds.), *Evolving Land Rights, Policy and Tenure in Africa*, London, International Institute for Environment and Development, 2000: 1-15.
- Alden Wily, Liz and Uda Nakamhela, *Group Rights in Communal Lands*, Windhoek, Millennium Challenge Account Namibia, 2013.
- Angula, Helmut, "The Viability of the Agricultural Economy in Communal Areas", in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- Chiari, Giacomo P., *Report of the UNDP Mission on Rural Livelihoods and Poverty in Namibia*, Windhoek, United Nations Development Programme, 2004.
- Cliffe, Lionel, *The Transition to Independence in Namibia*, Boulder, Rienner, 1994.
- Cousins, Ben and Aninka Claassens, "Communal Land Rights, Democracy and Traditional Leaders in Post-Apartheid South Africa", in: Munyaradzi Saruchera, (ed.), *Securing Land and Resource Rights in Africa: Pan-African Perspectives*, Bellville, Programme for Land and Agrarian Studies, 2004: 139-158.
- Cox, Jonathan, Carol Kerven, Wolfgang Werner and Roy Behnke, *The Privatisation of Rangeland Resources in Namibia: Enclosure in Eastern Oshikoto*, London, Overseas Development Institute, 1998.
- Department of Governmental Affairs, *Draft National Development Strategy for South West Africa*, Windhoek, Directorate Development Co-ordination, 1985.
- Department of Information, *Extensive Summary: Report of the Commission of Enquiry into South West Africa Affairs*, Typescript, Pretoria, n.d.
- Grimm, Joseph and Michael Humavindu, "Analysis of Community Forests", in: Christian Schuh, (ed.), *Economics of Land Use. Financial and Economic Analysis of Land-Based Development Schemes in Namibia*, Windhoek, Gesellschaft für Technische Zusammenarbeit, 2006: 82-89.
- Hamutenya, Hidipo, "Development and Communal Land System", in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- International Development Consultants, *Executive summary. The Communal Land Development Studies*, Windhoek, n.d.
- Ivula-Ithana, Pendukeni, "Welcoming Address", in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- Iyambo, Nickey, "The Role of Traditional Authorities in a Changing Namibia", in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- Kerven, Carol, "'The Knife Cuts on Both Blades': Redefining Property Rights in Eastern Oshikoto Region, Namibia", in: Jonathan Cox, Carol Kerven, Wolfgang Werner and Roy Behnke, (eds.), *The*

- Privatisation of Rangeland Resources in Namibia*, London and Windhoek, Overseas Development Institute (ODI), 1998: 65-90.
- Kössler, Reinhart, *In Search of Survival and Dignity: Two Traditional Communities in Southern Namibia under South African Rule*, Windhoek, Gamsberg Macmillan, 2005.
- Legal Assistance Centre, *Guide to the Communal Land Reform Act, 2002 (No. 5 of 2002)*, 2nd ed., Windhoek, LAC, 2009.
- Long, Andrew S., (ed.), *Livelihoods and CBNRM in Namibia: the Findings of the WILD Project*, Windhoek, Ministry of Environment and Tourism, 2004.
- Malan, Johann and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- Meijs, Marcel, Claus-Peter Hager and Jericho Mulofwa, "Local Level Participatory Planning, an Approach Towards Tenure Security and Development Planning", paper presented at the *Annual World Bank Conference on Land and Poverty: Integrating land Governance into the Post-2015 Agenda: Harnessing Synergies for Implementation and Monitoring Impact*, Washington DC, World Bank, 2014.
- Mendelsohn, John, *Farming Systems in Namibia*, Windhoek, Research and Information Services of Namibia, 2006.
- Millennium Challenge Corporation / Orgut COWI, *Legal Requirements for Group Land Rights*, Windhoek, Millennium Challenge Account Namibia, 2014.
- Millennium Challenge Corporation / Orgut COWI, *Proposed Guidelines for Group Land Rights in Communal Areas*, Windhoek, Millennium Challenge Account Namibia, 2014.
- Millennium Challenge Corporation / Orgut COWI, *Proposed Working Policy for Group Land Rights*, Windhoek, Millennium Challenge Account Namibia, 2014.
- Ministry of Agriculture, Water and Forestry, *Green Scheme Policy*, Windhoek, Ministry of Agriculture, Water and Rural Development, 2008.
- Ministry of Lands, Resettlement and Rehabilitation, *National Land Policy*, Windhoek, Ministry of Lands, Resettlement and Rehabilitation, 1998.
- Muhongo, Mwendekwa, "Forest Conservation and the Role of Traditional Leaders: a Case Study of the Bukalo Community Forest", in: Manfred O. Hinz and Oliver C. Ruppel, (eds.), *Biodiversity and the Ancestors. Challenges to Customary and Environmental Law. Case Studies from Namibia*, Windhoek, Namibia Scientific Society, 2008: 197-208.
- Ndisiro v Gemeenskapsowerheid van die Mbanderu Gemeenskap van die Rietfonteinblok in Hereroland en 9 ander: Uitspraak*, Hooggeregshof van Suidwes-Afrika, 7 June 1984.
- Office of the Prime Minister, *Traditional Authorities Act, Pub. L. No. 17 of 1995*, 1995.
- Pankhurst, Donna, "Similar but Different: Assessing the Reserve Economy Legacy of Namibia", *Journal of Southern African Studies*, 22 (3), 1996: 405-420.
- du Pisani, André, *SWA/Namibia. The Politics of Continuity and Change*, Johannesburg, Ball, 1986.
- Republic of Namibia, (ed.), *National Conference on Land Reform and the Land Question*, Vol. 1, Windhoek, Office of the Prime Minister, 1991.
- Republic of Namibia, *Report by the Commission of Inquiry into Matters Relating to Chiefs, Headmen and Other Traditional or Tribal Leaders*, Windhoek, 1991.
- Republic of Namibia, "Communal Land Bill", in: Johann Malan and Manfred O. Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.
- Republic of Namibia, "Outline of a National Land Policy", in: Johann Malan and Manfred Hinz, (eds.), *Communal Land Administration. Second National Traditional Authority Conference. Proceedings*, Windhoek, Centre for Applied Social Sciences, 1997.

- Republic of South Africa, *Report of the Commission of Enquiry into South West Africa Affairs 1962/1963 (No. RP 12/1964)*, Pretoria, Government Printers, 1964.
- Sasman, Catherine, "Raging Dispute over Kavango Land", *The Namibian*, 25 January 2013.
- Schuh, Christian and Wolfgang Werner, "Analysis of the Green Scheme", in: Christian Schuh, (ed.), *Economics of Land Use. Financial and Economic Analysis of Land-Based Development Schemes in Namibia*, Windhoek, Gesellschaft für Technische Zusammenarbeit, 2006: 45-61.
- South West Africa, *A Five Year Plan for the Development of the Native Areas*, Windhoek, 1966.
- Thiem, Maarit, *A Decade of Communal Land Reform. Review and Lessons Learnt, with a Focus on Communal Land Rights Registration*, Windhoek, GIZ, 2014.
- Twyman, Chasha, Deborah Sporton, David Thomas and Andrew Dougill, "Community Fencing in Open Rangelands: a Case Study of Community Self-Empowerment in Eastern Namibia", in: Tor Benjaminsen, Ben Cousins and Lisa Thompson, (eds.), *Contested Resources. Challenges to the Governance of Natural Resources in Southern Africa*, Cape Town, PLAAS / University of the Western Cape, 2002: 127-140.
- Uzengisa & Another v The Executive Committee of the Administration for Herero's and 11 Others, Judgement*, The Supreme Court of South West Africa, 22 September 1989.
- Uzengisa & Others v The Executive Committee of the Administration for Herero's & Others*, The Supreme Court of South Africa (Appellate Division), 3 October 1989.
- Werner, Wolfgang, "Ethnicity and Reformism", in: Gerhard Töttemeyer, Vezera Kandetu and Wolfgang Werner, (eds.), *Namibia in Perspective*, Windhoek, Council of Churches in Namibia, 1987: 69-81.
- Werner, Wolfgang, "A Brief History of Land Dispossession in Namibia", *Journal of Southern African Studies*, 19 (1), 1993: 135-146.
- Werner, Wolfgang, *'No One Will Become Rich'. Economy and Society in the Herero Reserves in Namibia, 1915-1946*, Basel, Schlettwein, 1998.
- Werner, Wolfgang, *Land and Land Tenure Policy. Briefing paper for GTZ Project Appraisal Mission*, Windhoek, NEPRU, 2000.
- Werner, Wolfgang, *Integrated Land and Water Management: Policy and Institutional Issues (No. 1)*, Frankfurt/Main, Institute for Social-Ecological Research, 2007.